

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

PENSION BENEFIT GUARANTY
CORPORATION, on its own behalf and on behalf
of the Retirement Program of Liam Ventures, Inc.,

Plaintiff,

v.

WILLIAM F. FARLEY,
et al.

Defendants.

Civil Action No. 08CV2529

**JOINT STATUS REPORT FOR INITIAL STATUS
CONFERENCE SCHEDULED FOR JULY 31, 2008**

Plaintiff, the Pension Benefit Guaranty Corporation (“PBGC”), and Defendants William F. Farley (“Farley”), the Administrative Committee of the Retirement Program of Liam Ventures, Inc. (“Administrative Committee”), Kevin Donegan, Sheryl McCreary, Martin Pajor, Steve Seder, Todd Sluzas and David Wilson (collectively, the “Parties”), by counsel, file this Joint Status Report, and state:

A. NATURE OF CLAIMS ASSERTED/ FACTUAL AND LEGAL ISSUES

On May 2, 2008, PBGC, on its own behalf and on behalf of the Retirement Program of Liam Ventures, Inc. (the “Pension Plan”), initiated this action against the above captioned defendants.¹ The Pension Plan is a defined-benefit pension plan covered by the termination insurance program established under Title IV of ERISA. The Pension Plan was terminated effective March 31, 2005, and PBGC became statutory trustee of the Pension Plan on May 3,

¹ PBGC is an agency of, and a federal corporation wholly-owned by, the government of the United States, which was established to administer the federal pension termination insurance program established under Title IV of ERISA.

2005. As of the date of termination, PBGC estimates that the unfunded benefit liabilities of the Pension Plan were \$121.4 million.

Defendant Farley was the sole director and chief executive officer of Liam Ventures, Inc. ("LV"), which sponsored the Pension Plan. PBGC alleges that Defendant Administrative Committee was administrator of the Pension Plan under 29 U.S.C. § 1002(16)(A), a fiduciary of the Pension Plan under 29 U.S.C. § 1002(21), and the named fiduciary of the Pension Plan under 29 U.S.C. § 1102(a).

PBGC alleges that Defendants Kevin Donegan, Sheryl McCreary, Martin Pajor, Steven Seder, Todd Sluzas and David Wilson are individuals who were members of the Administrative Committee. PBGC further alleges that each member of the Administrative Committee was a fiduciary of the Pension Plan under 29 U.S.C. § 1002(21).

In the Complaint, PBGC asserts the following four counts:

- I. Breach of Fiduciary Duties in Administrative Committee Failure to Assert Interests of the Pension Plan Against Fraudulent Transfers (Against all Defendants);
- II. Self Dealing & Prohibited Transaction in the Contribution of Environmentally Contaminated Real Estate to the Plan (Against Defendant Farley);
- III. Self Dealing, Breach of Fiduciary Duty of Loyalty, & Prohibited Investment of Plan Assets in Which Investment Manager had Substantial Interests (Against Defendant Farley); and
- IV. Breach of Fiduciary Duties of Diversification, Care, Skill, Diligence and Prudence in Allocation and Management of Plan Investments (Against Defendant Farley).

With respect to Count I, PBGC asserts that the Administrative Committee and its members breached their fiduciary duties by failing to act to prevent LV and affiliated entities jointly and severally liable for LV's obligations to the Pension Plan from fraudulently transferring their assets to or for the benefit of Farley, which made those assets unavailable to

fund the Pension Plan. PBGC asserts that the Administrative Committee had a duty to, at a minimum, demand that LV cease fraudulent transfers and, failing that, to pursue, on behalf of the Plan, legal and equitable remedies available under fraudulent conveyance law.

With respect to Count II, PBGC asserts that Farley violated ERISA by engaging in prohibited transactions with the Pension Plan and self-dealing with Pension Plan assets. In particular, Farley violated 29 U.S.C. §§ 1106(a)(1)(D) and 1106(b)(1) by causing LV to contribute environmentally contaminated real property to the Pension Plan and the Pension Plan to accept the contaminated property, lease it back to LV, and bear environmental liabilities and costs of cleanup.

With respect to Count III, PBGC asserts that Farley engaged in self-dealing by causing the Pension Plan to invest in various entities in which he held substantial interests. PBGC seeks an award of money damages for the sum of the Pension Plan's losses from each loss-producing investment in an entity in which Mr. Farley held substantial interests.

With respect to Count IV, PBGC asserts that Farley breached his fiduciary duties of diversification, care, skill, diligence and prudence in allocation and management of the Pension Plan's investments, resulting in losses to the Pension Plan.

Responsive pleadings are due on August 25, 2008.

B. JURISDICTION

This Court has jurisdiction over the action pursuant to 29 U.S.C. § 1303(e)(3) and 28 U.S.C. §§ 1331 and 1345. The defendants have waived service of summonses.

C. JURY TRIAL

None of the Parties has demanded a jury trial at this time.

D. REFERRAL TO MAGISTRATE

The Parties do not unanimously consent to referral of this action to a Magistrate Judge.

E. SETTLEMENT DISCUSSIONS

The Parties do not request a settlement conference at this time. There are pending discussions regarding a partial dismissal.

F. DISCOVERY

Discovery has not commenced. Due to the complex nature of this matter, the Parties anticipate extensive fact and expert discovery will be required. The Parties believe that they will require at least ten months for discovery, six months for fact discovery and an additional four months for expert discovery. The matter will not be ready for trial until approximately July 2009.

G. POTENTIAL MOTION TO REASSIGN RELATED ACTION

On May 9, 2008, PBGC, on its own behalf and on behalf of the Pension Plan, filed a related action in the United States District Court for the Northern District of Illinois: PBGC v. LV Ventures, Inc. et al (No. 08CV2699) (the "Collection Action"), wherein PBGC seeks, *inter alia*, (1) to enforce statutory liabilities of LV and its affiliates for missed contributions to, and underfunding of, the Pension Plan, and for unpaid pension termination insurance premiums due PBGC; (2) to hold Farley liable for the same by piercing the corporate veils of LV and its parent corporation; and (3) to foreclose on liens that arose in favor of the Pension Plan under section 412(n) of the Internal Revenue Code. The Parties anticipate that PBGC will seek reassignment of the Collection Action to your Honor pursuant to Local Rule 40.4. There have been no proceedings in the Collection Action.

H. ATTORNEYS OF RECORD AND TRIAL ATTORNEYS

The names of the attorneys of record expected to try this case on behalf of the Pension Benefit Guaranty Corporation are: Joel W. Ruderman, John H. Ginsberg, Frank Anderson, and Cassandra Burton.

The names of the attorneys of record expected to try this case on behalf of Defendant Farley are: Bernard J. Nussbaum, and Richard L. Fenton.

The names of the attorneys of record expected to try this case on behalf of Defendants Administrative Committee, Kevin Donegan, Sheryl McCreary, Martin Pajor, Steve Seder, Todd Sluzas and David Wilson are: Carol Connor Cohen, Nancy S. Heermans, and Valerie Webb.

Dated: July 16, 2008
Washington, D.C.

Respectfully submitted,

/s/ Joel W. Ruderman
ISRAEL GOLDOWITZ
Chief Counsel
KAREN MORRIS
Deputy Chief Counsel
KARTAR KHALSA
Assistant Chief Counsel
JOEL W. RUDERMAN
Assistant Chief Counsel
FRANK ANDERSON
JOHN H. GINSBERG
CASSANDRA BURTON
Attorneys
PENSION BENEFIT GUARANTY CORPORATION
Office of the Chief Counsel
1200 K Street, N.W.
Washington, D.C. 20005
Tel. No. (202) 326-4020, ext. 3732
Fax No. (202) 326-4112
E-mail: ginsberg.john@pbgc.gov and
efile@pbgc.gov

Attorneys for Pension Benefit Guaranty Corporation

/s/ Sara A. Weinberg
Sara A. Weinberg, Esquire
JACKSON LEWIS LLP
320 West Ohio Street, Suite 500
Chicago, Illinois 60610
Tel. No. (312) 787-4949
Fax No. (312) 787-4995
E-mail: Weinbers@jacksonlewis.com

Dated: July 16, 2008
Washington, D.C.

/s/ Carol Connor Cohen
Carol Connor Cohen, Esquire
Nancy S. Heermans, Esquire
Valerie Webb, Esquire
ARENT FOX LLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
Telephone: (202) 857-6000
Fax: (202) 857-6395
Email: Cohen.carol@arentfox.com
Heermans.nancy@arentfox.com
Webb.valerie@arentfox.com

Attorneys for Defendants Administrative Committee of the
Retirement Program of Liam Ventures, Inc., Kevin Donegan,
Sheryl McCreary, Martin Pajor, Steve Seder, Todd Sluzas and
David Wilson

Dated: July 16, 2008
Chicago, Illinois

/s/ Bernard J. Nussbaum
Bernard J. Nussbaum, Esquire
Richard L. Fenton, Esquire
Members of the Trial Bar
SONNENSCHN NATH & ROSENTHAL LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, IL 60606-6404
Telephone: 312.876.8000
Fax: 312.876.7934
Email: bnussbaum@sonnenschein.com
rfenton@sonnenschein.com

Attorneys for Defendant William E. Farley

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on **July 16, 2008**, she caused the foregoing to be filed with the Court by electronic filing protocols, and that same will therefore be electronically served upon all attorneys of record registered with the Court's ECF/CM system, including:

ISRAEL GOLDOWITZ

Chief Counsel

KAREN MORRIS

Deputy Chief Counsel

KARTAR KHALSA

Assistant Chief Counsel

JOEL W. RUDERMAN

Assistant Chief Counsel

FRANK ANDERSON

JOHN H. GINSBERG

CASSANDRA BURTON

Attorneys

PENSION BENEFIT GUARANTY CORPORATION

Office of the Chief Counsel

1200 K Street, N.W.

Washington, D.C. 20005

Bernard J. Nussbaum, Esquire

Richard L. Fenton, Esquire

SONNENSCHN EINH NATH & ROSENTHAL LLP

7800 Sears Tower

233 South Wacker Drive

Chicago, IL 60606-6404

Carol Connor Cohen, Esquire

Nancy S. Heermans, Esquire

Valerie Webb, Esquire

ARENT FOX LLC

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5339

Dated: July 16, 2008

By: /s/ Sara A. Weinberg
Sara A. Weinberg